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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,337	03/15/2004	Richard R. Johnson	SAM2078	9934

7590 11/16/2004
Sean A. Kaufhold
P.O. Box 131447
Carlsbad, CA 92013

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,337

Applicant(s)

JOHNSON, RICHARD R.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 4, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,133,637 to Shulman.

Regarding Claim 1, Shulman teaches a support assembly for supporting a bell-shaped bird feeder: a base (Fig. 1) having an upper surface, a lower surface and a peripheral edge; a pair of legs (#11 and 12), each of said each of said legs having a first and a second end, each of said first ends being attached to said base such that each of said legs extends upwardly from said base, each of said legs being arced such that said second ends abut each other and an inner perimeter edge of said legs is defined; and a coupler (#15 and 17) being adapted for removably securing the bird feeder to said pair of legs, wherein the bird feeder may be attached to said legs such that the bird feeder is suspended between the legs (#27).

Regarding Claim 2, Shulman teaches the inner perimeter edge has a generally bell-shaped configuration (Fig. 1).

Regarding Claim 3, Shulman teaches the coupler comprises a hook being attached to and extending downwardly from a juncture of said second ends of said legs (Fig. 1 the nut attached to perpendicular element #19 creates a hook).

Regarding Claim 4, Shulman teaches a cover (#16) being attached to an outer perimeter edge of said legs such that said cover extends over said base.

Regarding Claim 9, Shulman teaches including a securing member (#20) being attached to said cover and extending upwardly therefrom, said securing member being adapted for releasably securing said cover to a tether.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,503,372 to Saurer.

Regarding Claim 1, Saurer teaches a support assembly for supporting a bell-shaped bird feeder: a base (#11) having an upper surface, a lower surface and a peripheral edge; a pair of legs (#13), each of said each of said legs having a first and a second end, each of said first ends being attached to said base such that each of said legs extends upwardly from said base, each of said legs being arced (Fig. 4 just above element #12) such that said second ends abut each other and an inner perimeter edge of said legs is defined; and a coupler (#14) being adapted for removably securing the bird feeder to said pair of legs, wherein the bird feeder may be attached to said legs such that the bird feeder is suspended between the legs.

Regarding Claim 2, Saurer teaches the inner perimeter edge has a generally bell-shaped configuration (Fig. 4 #13 and 12).

Regarding Claim 3, Saurer teaches a coupler (#23) comprises a hook being attached to and extending downwardly from a juncture of said second ends of said legs.

Regarding Claim 4, Saurer teaches a cover (#16) being attached to an outer perimeter edge of said legs such that said cover extends over said base.

Regarding Claims 6 and 7, Saurer teaches a pair of ridges (#12), each of said ridges being attached to and extending upwardly from said base, each of said ridges being positioned adjacent to said peripheral edge, said ridges being positioned oppositely with respect to each other on said base.

Regarding Claims 8 and 9, Saurer teaches including a securing member (#31) being attached to said cover and extending upwardly therefrom, said securing member being adapted for releasably securing said cover to a tether.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,133,637 to Shulman in view of U.S. Patent No. 6,024,047 to Hoogland.

Regarding Claim 5, Shulman is silent on the cover including a pair of plates joined along a common edge, each of said plates being angled downward from said common edge. However, Hoogland teaches a bird feeder cover including two plates joined along a common edge (Hoogland #26). It would have been obvious to one of ordinary skill in the art to modify the teachings of Shulman with the teachings of Hoogland at the time of the invention since the modification is merely the selection of an

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alternate equivalent cover design selected as a means of changing the aesthetic appearance and does not present a patentably distinct limitation.

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,503,372 to Saurer as applied to claims 1-4 and 6-9 above and in view of U.S. Patent No. 6,024,047 to Hoogland.

Regarding Claims 5 and 10, Saurer is silent on the cover including a pair of plates joined along a common edge, each of said plates being angled downward from said common edge. However, Hoogland teaches a bird feeder cover including two plates joined along a common edge (Hoogland #26). It would have been obvious to one of ordinary skill in the art to modify the teachings of Saurer with the teachings of Hoogland at the time of the invention since the modification is merely the selection of an alternate equivalent cover design selected as a means of changing the aesthetic appearance and does not present a patentably distinct limitation.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

PCT WO 94/07360; Switzerland Patent CH 613603; United Kingdom Patent GB 2275408; U.S. Patent Des. 224,823; U.S. Patent No. 4,958,595; U.S. Patent No. 1,791,175; U.S. Patent No. 1,794,718; U.S. Patent No. 56,280; U.S. Patent Des. 426,683; U.S. Patent Des. 329,509.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

09 November 2004



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600